

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES W. MOELLER)
PMB No. 106-150)
4200 Wisconsin Avenue NW)
Washington DC 20016,)
)
Plaintiff,) Case: 1:19-cv-01821
v.) Assigned To : Chutkan, Tanya S.
) Assign. Date : 6/21/2019
) Description: FOIA/Privacy (I-DECK)
EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION)
131 M Street NE)
Washington DC 20507)
)
Defendant.)

COMPLAINT

Plaintiff *Pro Se* James W. Moeller brings this action under the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552. Plaintiff seeks injunctive and other appropriate relief as well as the disclosure and release of agency records improperly withheld from Plaintiff by Defendant Equal Employment Opportunity Commission ("EEOC").

PARTIES

1. Plaintiff is a Washington, D.C. resident.
2. Defendant EEOC is an Independent Commission within the Executive Branch of the United States Government. EEOC is an "agency" within the meaning of 5 U.S.C. § 552(f).

JURISDICTION AND VENUE

3. This Honorable Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

4. Venue lies in this Honorable Court under 5 U.S.C. § 552(a)(4)(B).

STATEMENT OF FACTS

5. On April 30, 2019, Plaintiff filed (via email) with Defendant a FOIA request.

6. The FOIA request sought “copies of all documents and communications relating to an age discrimination complaint filed with the EEOC by Ralph Devito against Infosys in or about 2009.”

7. Defendant assigned the FOIA request FOIA No. 820-2019-010877.

8. On May 7, Defendant denied the FOIA request (Attachment A).

9. Defendant denied the request under Exemption (b)(7)(C):

Exemption (b)(7)(C) authorizes the Commission to withhold: records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy. The seventh exemption applies to civil and criminal investigations conducted by regulatory agencies. *Abraham & Rose, P.L.C. v. United States*, 138 F.3d 1075, 1083 (6th Cir. 1998). Release of statements and identities of witnesses and subjects of an investigation creates the potential for witness intimidation that could deter their cooperation. *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214, 239 (1978). “Personal privacy” only encompasses individuals, and does not extend to the privacy interests of corporations. *FCC v. AT&T Inc.*, 131 S.Ct. 1177, 1178 (2011).

Attachment A at 2.

10. The denial of the FOIA request also stated that “Exemption (b)(7)(C) permits withholding of agency records to prevent an unwarranted invasion of personal privacy.”

Attachment A at 2.

11. On May 9, Plaintiff appealed (via email) the denial of his FOIA request.
12. Plaintiff argued in his appeal that Defendant was not entitled to withhold entire documents under Exemption (b)(7)(C):

Under Exemption 7(C) of FOIA, 5 U.S.C. § 552(b)(7)(C), however, the EEOC is not permitted to withhold entire documents when it would suffice to redact information that “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” “The focus in the FOIA is information, not documents, and an agency cannot justify withholding an entire document simply by showing that it contains some exempt material.” *Krikorian v. Department of State*, 984 F.2d 461, 467 (D.C. Cir. 1993); *see also Church of Scientology International v. U.S. Department of Justice*, 30 F.3d 224, 232 (1st Cir. 1994).

13. In the interest of personal privacy, Plaintiff requested that Defendant release the requested documents with the identities of witnesses and subjects redacted:

If the documents I have requested contain the identities of witnesses and subjects of an investigation, then those identities may be redacted. But the documents otherwise must be produced. *Canning v. DOJ*, No. 01-2215, slip op. at 19 (D.D.C. Mar. 9, 2004)(finding application of Exemption 7(C) to entire documents rather than to personally identifying information within documents to be overly broad).

14. Defendant assigned the FOIA appeal FOIA Appeal No. 820-2019-000153A.
15. On May 24, Defendant denied the FOIA appeal (Attachment B).
16. In its denial of the FOIA appeal, Defendant reiterated the boilerplate language used in its initial determination but added that “[d]isclosure of identities of employee-witnesses could cause ‘problems at their jobs and with their livelihoods.’ *L&C Marine Transport, Ltd. V. United States*, 740 F.2d 919, 923 (11th Cir. 1984).”

17. The denial also included dictum from a Supreme Court decision:

The Supreme Court has explained that only “[o]fficial information that sheds light on an agency’s performance of its statutory duties” merits disclosure under FOIA, and noted that “disclosure of information about private citizens that is accumulated in various governmental files” would “reveal little or nothing about an agency’s own conduct.” *United States Department of Justice v. Reporter’s Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989).

Attachment B at 2.

18. Utilizing the same Supreme Court dictum, Defendant discussed its denial of the FOIA appeal:

We are affirming the denial of your FOIA request because EEOC may not release the requested information to you or any other member of the public. To do so would violate the privacy interests of the parties to the charge you seek. Exemption (b)(7)(C) serves to exempt from FOIA disclosure information compiled for law enforcement purposes when disclosure would violate the privacy interests of individuals. Exemption (b)(7)(C) would not apply if releasing the charge would be required in order to meet the core public interest of the FOIA, which is to “shed[] light on an agency’s performance of its statutory duties.” *Reporters Committee for Freedom of the Press v. Department of Justice*, 109 S. Ct. 1468, 1481 (1989). Disclosure of this charge file does not “directly reveal government operations or activities,” Department of Justice FOIA Update, Vol. X, No. 2 (1989), so your request “falls outside the ambit of the public interest that the FOIA was enacted to serve.” *Reporters Committee*, 109 S. Ct. at 1482. Therefore, Exemption (b)(7)(C) bars from disclosure to you all portions of all documents in the charge file you seek, and redactions are not possible.

Attachment B at 2.

19. Defendant has acknowledged that “personal privacy only encompasses individuals, and does not extend to the privacy interests of corporations.”

21. In response to the age discrimination complaint filed with the EEOC by Ralph Devito against Infosys in or about 2009, EEOC issued to Devito a Notice of Right to Sue.

22. On February 23, 2011, Devito filed a civil action against Infosys in the United States District Court for the District of New Jersey. *Devito v. Infosys Technologies, Ltd.*, No. 2:11:CV-01025 (D.N.J. filed Feb. 23, 2011).

STATEMENT OF CLAIM

Failure to Respond to Request for Documents Under Freedom of Information Act

23. Defendant has not provided the records requested by Plaintiff in his FOIA request of April 30, 2019.

24. Plaintiff has exhausted his administrative remedies with respect to his FOIA request to Defendant.

25. Defendant has wrongfully withheld the requested records from Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court:

1. order Defendant to disclose the requested records and make copies available to Plaintiff;
2. provide for expeditious proceedings in this action;
3. award Plaintiff his costs and reasonable attorney fees incurred in this action; and
4. grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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